

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

ALAN NEWTON,

Plaintiff,

-against-

THE CITY OF NEW YORK, DISTRICT ATTORNEYS  
MARIO MEROLA AND ROBERT T. JOHNSON,  
INDIVIDUALLY AND IN THEIR OFFICIAL  
CAPACITY, ANDREA FREUND AND VARIOUS  
JOHN/JANE DOES, INDIVIDUALLY AND IN THEIR  
OFFICIAL CAPACITIES AS EMPLOYEES OF THE  
CITY OF NEW YORK WHO ARE/WERE ASSISTANT  
DISTRICT ATTORNEYS WITHIN THE OFFICE OF  
THE DISTRICT ATTORNEY, COUNTY OF BRONX;  
DETECTIVE JOANNE NEWBERT, DETECTIVE  
PHILIP GALLIGAN, DETECTIVE [JOHN DOE]  
HARTFIELD, DETECTIVE [JOHN DOE] RYAN,  
DETECTIVE [JOHN DOE] HARRIS, POLICE OFFICER  
DOUGLAS LEHO, POLICE OFFICER WILLIAM SEAN  
O'TOOLE, LIEUTENANT MICHAEL SHEEHAN,  
SERGEANT PATRICK J. MCGUIRE, POLICE OFFICER  
[JOHN DOE] HASKINS, POLICE OFFICER [JANE  
DOE] KIELY, INSPECTOR JACK TRABITZ AND  
VARIOUS JOHN/JANE DOES, INDIVIDUALLY AND  
IN THEIR OFFICIAL CAPACITIES AS EMPLOYEES  
OF THE CITY OF NEW YORK WHO ARE/WERE  
MEMBERS OF THE POLICE DEPARTMENT OF THE  
CITY OF NEW YORK,

Defendants.

----- x

**ANSWER OF DEFENDANTS**  
**CITY OF NEW YORK,**  
**JOHNSON, FREUND,**  
**NEWBERT, RYAN, HARRIS,**  
**LEHO, O'TOOLE,**  
**SHEEHAN, MCGUIRE,**  
**KIELY AND TRABITZ**

07-CV-6211 (SAS) (HBP)

**JURY TRIAL DEMANDED**

Defendants City of New York, Robert T. Johnson, Andrea Freund, Joanne

Newbert, Bernard Ryan (sued herein as "Detective John Doe Ryan"), Roland Harris (sued herein  
as "Detective John Doe Harris"), Douglas Leho, William Sean O'Toole, Michael Sheehan,

Patrick McGuire, Catherine Kiely (sued herein as “Police Officer Jane Doe Kiely”), and Jack Trabit, <sup>1</sup> by their attorney Michael A. Cardozo, Corporation Counsel of the City of New York, as and for their answer to the complaint, respectfully allege, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph “1” of the complaint, except admit that plaintiff purports to bring this action as stated therein.

2. Deny the allegations set forth in paragraph “2” of the complaint, except admit that plaintiff purports to invoke this Court’s jurisdiction as stated therein.

3. Deny the allegations set forth in paragraph “3” of the complaint, except admit that plaintiff purports to invoke this Court’s jurisdiction as stated therein.

4. Deny the allegations set forth in paragraph “4” of the complaint, except admit that plaintiff purports to lay venue in this district.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the complaint.

6. Deny the allegations set forth in paragraph “6” of the complaint, except admit that the City of New York (the “City”) is a municipal corporation organized under the laws of the State of New York.

7. Deny the allegations set forth in paragraph “7” of the complaint, except admit that the City maintains a police department.

8. Deny the allegations set forth in paragraph “8” of the complaint, except admit that Mario Merola was formerly the District Attorney of Bronx County, that Robert

---

<sup>1</sup> Upon information and belief, defendants Haskins, Merola, Hartfield and Galligan are deceased.

Johnson currently is the District Attorney of Bronx County, and that Andrea Freund, John F. Carroll, Robert Moore and Rafael Curbello were employed by the Bronx County District Attorney's Office.

9. The allegations of paragraph "9" of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

10. The allegations of paragraph "10" of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

11. Deny the allegations set forth in paragraph "11" of the complaint, except admit that the City maintains a police department.

12. The allegations of paragraph "12" of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

13. Deny the allegations set forth in paragraph "13" of the complaint, and respectfully refer the Court to the Charter and Administrative Code of the City of New York, Article 18 of the County Law of the State of New York and all other applicable law for a full and complete statement of the powers and duties of the District Attorney.

14. Deny the allegations set forth in paragraph "14" of the complaint, except admit that JoAnn Newbert was formerly employed by the NYPD.

15. Deny the allegations set forth in paragraph "15" of the complaint, except admit that Philip Galligan was formerly employed by the NYPD.

16. Deny the allegations set forth in paragraph “16” of the complaint, except admit that Richard Hartfield (sued herein as “John Doe Hartfield”) was formerly employed by the NYPD.

17. Deny the allegations set forth in paragraph “17” of the complaint, except admit that Bernard Ryan (sued herein as “John Doe Ryan”) was formerly employed by the NYPD.

18. Deny the allegations set forth in paragraph “18” of the complaint, except admit that Roland Harris (sued herein as “John Doe Harris”) is employed by the NYPD.

19. Deny the allegations set forth in paragraph “19” of the complaint, except admit that Douglas Leho was formerly employed by the NYPD.

20. Deny the allegations set forth in paragraph “20” of the complaint, except admit that William Sean O’Toole is employed by the NYPD.

21. Deny the allegations set forth in paragraph “21” of the complaint, except admit that Michael Sheehan was formerly employed by the NYPD.

22. Deny the allegations set forth in paragraph “22” of the complaint, except admit that Patrick McGuire was formerly employed by the NYPD.

23. Deny the allegations set forth in paragraph “23” of the complaint, except admit that John Haskins (sued herein as “John Doe Haskins”) was formerly employed by the NYPD.

24. Deny the allegations set forth in paragraph “24” of the complaint, except admit that Catherine Kiely is employed by the NYPD.

25. Deny the allegations set forth in paragraph “25” of the complaint, except admit that Inspector Jack Trabitiz is employed by the NYPD.

26. Deny the allegation that any City employee was “involved in . . . omissions” relating to Alan Newton, deny knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth therein, and refer the Court to any existing documents and evidence relating to the circumstances surrounding the rape and assault of V.J. and the related proceedings conducted under Indictment # 2441/84, including the trial held in May, 1985, and the proceedings related to plaintiff’s requests for post-conviction DNA testing (the “relevant documents, evidence and proceedings”).

27. The allegations of paragraph “27” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

28. The allegations of paragraph “28” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

29. The allegations of paragraph “29” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations, and respectfully refer the Court to the Charter and Administrative Code of the City of New York for a full and complete statement of the duties and responsibilities of the NYPD.

30. Deny the allegations set forth in paragraph “30” of the complaint.

31. Deny the allegations set forth in paragraph “31” of the complaint, except admit that plaintiff appeared for a hearing pursuant to Section 50-h of the General Municipal Law on or about December 19, 2006.

32. The allegations of paragraph “32” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

33. Deny the allegations set forth in paragraph “33” of the complaint, except admit that plaintiff was released from prison in or about July, 2006.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the complaint.

35. Deny the allegations set forth in paragraph “35” of the complaint, except admit that plaintiff was released from prison in or about July, 2006.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37” of the complaint, except admit that V.J. was raped on or about June 23, 1984, and refer the Court to the relevant evidence, documents and proceedings.

38. Deny the allegations set forth in paragraph “38” of the complaint, except admit that Alan Newton was indicted under Indictment # 2441/84, and refer the Court to the relevant documents, evidence and proceedings.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40” of the complaint, except admit that DNA testing was reportedly conducted, and refer the Court to the relevant documents, evidence and proceedings.

41. Deny the allegations set forth in paragraph “41” of the complaint, except admit that plaintiff’s conviction was set aside in or about July, 2006.

42. Deny the allegations set forth in paragraph “42” of the complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “45” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

49. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “49” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

50. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “50” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

51. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “51” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

52. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “52” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “53” of the complaint, except admit that V.J. was transported to Jacobi Hospital, and refer the Court to the relevant documents, evidence and proceedings.

54. Deny the allegations set forth in paragraph “54” of the complaint, except admit that a rape kit was collected.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “55” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.



56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “56” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

57. Deny the allegations set forth in paragraph “57” of the complaint.

58. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “58” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

60. Deny the allegations set forth in paragraph “60” of the complaint.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “61” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

62. Deny the allegations set forth in paragraph “62” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

63. Deny the allegations set forth in paragraph “63” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “64” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

65. Deny the allegations set forth in paragraph “65” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “66” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

67. Deny the allegations set forth in paragraph “67” of the complaint.

68. Deny the allegations set forth in paragraph “68” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

69. Deny the allegations set forth in paragraph “69” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

70. Deny the allegations set forth in paragraph “70” of the complaint.

71. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “71” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

72. Deny the allegations set forth in paragraph “72” of the complaint.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “73” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

74. Deny the allegations set forth in paragraph “74” of the complaint.

75. Deny the allegations set forth in paragraph “75” of the complaint.

76. Deny the allegations set forth in paragraph “76” of the complaint.

77. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “77” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

78. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “78” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

79. Deny the allegations set forth in paragraph “79” of the complaint.

80. Deny the allegations set forth in paragraph “80” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

81. Deny the allegations set forth in paragraph “81” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

82. Deny the allegations set forth in paragraph “82” of the complaint.

83. Deny the allegations set forth in paragraph “83” of the complaint.

84. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “84” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “85” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “86” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

87. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “87” of the complaint.

88. Deny the allegations set forth in paragraph “88” of the complaint.

89. Deny the allegations set forth in paragraph “89” of the complaint.

90. Deny the allegations set forth in paragraph “90” of the complaint.

91. Deny the allegations set forth in paragraph “91” of the complaint.

92. Deny the allegations set forth in paragraph “92” of the complaint.

93. Deny the allegations set forth in paragraph “93” of the complaint.

94. Deny the allegations set forth in paragraph “94” of the complaint.

95. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “95” of the complaint, except admit that a verdict was reached on or about May 21, 1985, and refer the Court to the relevant documents, evidence and proceedings.

96. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “96” of the complaint, except admit that Newton was convicted of First Degree Rape and other crimes, and refer the Court to the relevant documents, evidence and proceedings.

97. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “97” of the complaint, except admit that Newton was sentenced.

98. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “98” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

99. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “99” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

100. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “100” of the complaint, except admit that a rape kit was vouchered, and refer the Court to the relevant documents, evidence and proceedings.

101. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “101” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

102. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “102” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

103. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “103” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

104. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “104” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

105. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “105” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

106. Deny the allegations set forth in paragraph “106” of the complaint.

107. Deny the allegations set forth in paragraph “107” of the complaint.

108. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “108” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

109. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “109” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

110. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “110” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

111. Deny the allegations set forth in paragraph “111” of the complaint.

112. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “112” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

113. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “113” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

114. Deny the allegations set forth in paragraph “114” of the complaint.

115. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “115” of the complaint.

116. Deny the allegations set forth in paragraph “116” of the complaint.

117. Deny the allegations set forth in paragraph “117” of the complaint.

118. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “118” of the complaint, and refer the Court to the relevant documents, evidence and proceedings.

119. Deny the allegations set forth in paragraph “119” of the complaint.

120. Deny the allegations set forth in paragraph “120” of the complaint.

121. Deny the allegations set forth in paragraph “121” of the complaint.

122. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “122” of the complaint, except admit that DNA testing reportedly was conducted, and refer the Court to the relevant documents, evidence and proceedings.

123. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “123” of the complaint, except admit that Newton’s conviction was vacated in or about July, 2006, and refer the Court to the relevant documents, evidence and proceedings.

124. Deny the allegations set forth in paragraph “124” of the complaint.

**ANSWERING THE FIRST CAUSE OF ACTION**

125. Repeat and reallege each and every response to paragraphs “1” through “124” of the complaint, as though fully set forth herein.

126. Deny the allegations set forth in paragraph “126” of the complaint

127. Deny the allegations set forth in paragraph “127” of the complaint.

128. Deny the allegations set forth in paragraph “128” of the complaint.

129. Deny the allegations set forth in paragraph “129” of the complaint.

130. Deny the allegations set forth in paragraph “130” of the complaint.

131. Deny the allegations set forth in paragraph “131” of the complaint.

132. Deny the allegations set forth in paragraph “132” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE SECOND CAUSE OF ACTION**

133. Repeat and reallege each and every response to paragraphs “1” through “132” of the complaint, as though fully set forth herein.

134. Deny the allegations set forth in paragraph “134” of the complaint.

135. Deny the allegations set forth in paragraph “135” of the complaint.

136. Deny the allegations set forth in paragraph “136” of the complaint.

137. Deny the allegations set forth in paragraph “137” of the complaint.

138. Deny the allegations set forth in paragraph “138” of the complaint.

139. Deny the allegations set forth in paragraph “139” of the complaint.

140. Deny the allegations set forth in paragraph “140” of the complaint.

141. Deny the allegations set forth in paragraph “141” of the complaint.

142. Deny the allegations set forth in paragraph “142” of the complaint.

143. Deny the allegations set forth in paragraph “143” of the complaint.

144. Deny the allegations set forth in paragraph “144” of the complaint.

145. Deny the allegations set forth in paragraph “145” of the complaint.

146. Deny the allegations set forth in paragraph “146” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE THIRD CAUSE OF ACTION**

147. Repeat and reallege each and every response to paragraphs “1” through “146” of the complaint, as though fully set forth herein.

148. Deny the allegations set forth in paragraph “148” of the complaint.

149. Deny the allegations set forth in paragraph “149” of the complaint.

150. Deny the allegations set forth in paragraph “150” of the complaint.



151. Deny the allegations set forth in paragraph “151” of the complaint.

152. Deny the allegations set forth in paragraph “152” of the complaint.

153. Deny the allegations set forth in paragraph “153” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE FOURTH CAUSE OF ACTION**

154. Repeat and reallege each and every response to paragraphs “1” through “153” of the complaint, as though fully set forth herein.

155. Deny the allegations set forth in paragraph “155” of the complaint.

156. The allegations of paragraph “156” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

157. Deny the allegations set forth in paragraph “157” of the complaint.

158. Deny the allegations set forth in paragraph “158” of the complaint.

159. Deny the allegations set forth in paragraph “159” of the complaint.

160. Deny the allegations set forth in paragraph “160” of the complaint.

161. Deny the allegations set forth in paragraph “161” of the complaint.

162. Deny the allegations set forth in paragraph “162” of the complaint.

163. Deny the allegations set forth in paragraph “163” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE FIFTH CAUSE OF ACTION**

164. Repeat and reallege each and every response to paragraphs “1” through “163” of the complaint, as though fully set forth herein.

165. Deny the allegations set forth in paragraph “165” of the complaint.

166. Deny the allegations set forth in paragraph “166” of the complaint.

167. Deny the allegations set forth in paragraph “167” of the complaint.

168. Deny the allegations set forth in paragraph “168” of the complaint.

169. Deny the allegations set forth in paragraph “169” of the complaint.

170. Deny the allegations set forth in paragraph “170” of the complaint.

171. Deny the allegations set forth in paragraph “171” of the complaint.

172. Deny the allegations set forth in paragraph “172” of the complaint.

173. Deny the allegations set forth in paragraph “173” of the complaint.

174. Deny the allegations set forth in paragraph “174” of the complaint.

175. Deny the allegations set forth in paragraph “175” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE SIXTH CAUSE OF ACTION**

176. Repeat and reallege each and every response to paragraphs “1” through “172” of the complaint, as though fully set forth herein.

177. The allegations of paragraph “177” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

178. Deny the allegations set forth in paragraph “178” of the complaint.

179. Deny the allegations set forth in paragraph “179” of the complaint.

180. Deny the allegations set forth in paragraph “180” of the complaint.

181. Deny the allegations set forth in paragraph “181” of the complaint.

182. Deny the allegations set forth in paragraph “182” of the complaint.

183. Deny the allegations set forth in paragraph “183” of the complaint.

184. Deny the allegations set forth in paragraph “184” of the complaint.

185. Deny the allegations set forth in paragraph “185” of the complaint.

186. Deny the allegations set forth in paragraph “186” of the complaint.

187. Deny the allegations set forth in paragraph “187” of the complaint.

188. Deny the allegations set forth in paragraph “188” of the complaint.

189. Deny the allegations set forth in paragraph “189” of the complaint.

190. Deny the allegations set forth in paragraph “190” of the complaint.

191. Deny the allegations set forth in paragraph “191” of the complaint.

192. Deny the allegations set forth in paragraph “192” of the complaint.

193. Deny the allegations set forth in paragraph “193” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE SEVENTH CAUSE OF ACTION**

194. Repeat and reallege each and every response to paragraphs “1” through “190” of the complaint, as though fully set forth herein.

195. The allegations of paragraph “195” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

196. Deny the allegations set forth in paragraph “196” of the complaint.

197. Deny the allegations set forth in paragraph “197” of the complaint.

198. Deny the allegations set forth in paragraph “198” of the complaint.

199. Deny the allegations set forth in paragraph “199” of the complaint.

200. Deny the allegations set forth in paragraph “200” of the complaint.

201. Deny the allegations set forth in paragraph “201” of the complaint.

202. Deny the allegations set forth in paragraph “202” of the complaint.

203. Deny the allegations set forth in paragraph “203” of the complaint.

204. Deny the allegations set forth in paragraph “204” of the complaint.

205. Deny the allegations set forth in paragraph “205” of the complaint.

206. Deny the allegations set forth in paragraph “206” of the complaint.

207. Deny the allegations set forth in paragraph “207” of the complaint.

208. Deny the allegations set forth in paragraph “208” of the complaint.

209. Deny the allegations set forth in paragraph “209” of the complaint.

210. Deny the allegations set forth in paragraph “210” of the complaint.

211. Deny the allegations set forth in paragraph “211” of the complaint.

212. Deny the allegations set forth in paragraph “212” of the complaint, except

admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE EIGHTH CAUSE OF ACTION**

213. Repeat and reallege each and every response to paragraphs “1” through

“209” of the complaint, as though fully set forth herein.

214. Deny the allegations set forth in paragraph “214” of the complaint.

215. Deny the allegations set forth in paragraph “215” of the complaint.

216. Deny the allegations set forth in paragraph “216” of the complaint.

217. Deny the allegations set forth in paragraph “217” of the complaint.

218. Deny the allegations set forth in paragraph “218” of the complaint.

219. Deny the allegations set forth in paragraph “219” of the complaint, except

admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE NINTH CAUSE OF ACTION**

220. Repeat and reallege each and every response to paragraphs “1” through “216” of the complaint, as though fully set forth herein.

221. The allegations of paragraph “221” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

222. The allegations of paragraph “222” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

223. Deny the allegations set forth in paragraph “223” of the complaint.

224. Deny the allegations set forth in paragraph “224” of the complaint.

225. Deny the allegations set forth in paragraph “225” of the complaint.

226. Deny the allegations set forth in paragraph “226” of the complaint.

227. Deny the allegations set forth in paragraph “227” of the complaint.

228. Deny the allegations set forth in paragraph “228” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE TENTH CAUSE OF ACTION**

229. Repeat and reallege each and every response to paragraphs “1” through “225” of the complaint, as though fully set forth herein.

230. Deny the allegations set forth in paragraph “230” of the complaint.

231. The allegations of paragraph “231” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

232. Deny the allegations set forth in paragraph “232” of the complaint.

233. Deny the allegations set forth in paragraph “233” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE ELEVENTH CAUSE OF ACTION**

234. Repeat and reallege each and every response to paragraphs “1” through “230” of the complaint, as though fully set forth herein.

235. Deny the allegations set forth in paragraph “235” of the complaint.

236. Deny the allegations set forth in paragraph “236” of the complaint.

237. Deny the allegations set forth in paragraph “237” of the complaint.

238. Deny the allegations set forth in paragraph “238” of the complaint.

239. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “239” of the complaint.

240. Deny the allegations set forth in paragraph “240” of the complaint.

241. Deny the allegations set forth in paragraph “241” of the complaint.

242. Deny the allegations set forth in paragraph “242” of the complaint.

243. Deny the allegations set forth in paragraph “243” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE TWELFTH CAUSE OF ACTION**

244. Repeat and reallege each and every response to paragraphs “1” through “240” of the complaint, as though fully set forth herein.

245. Deny the allegations set forth in paragraph “245” of the complaint.

246. Deny the allegations set forth in paragraph “246” of the complaint.

247. Deny the allegations set forth in paragraph “247” of the complaint.

248. Deny the allegations set forth in paragraph “248” of the complaint.

249. Deny the allegations set forth in paragraph “249” of the complaint.

250. Deny the allegations set forth in paragraph “250” of the complaint.

251. Deny the allegations set forth in paragraph “251” of the complaint.

252. Deny the allegations set forth in paragraph “252” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE THIRTEENTH CAUSE OF ACTION**

253. Repeat and reallege each and every response to paragraphs “1” through “249” of the complaint, as though fully set forth herein.

254. Deny the allegations set forth in paragraph “254” of the complaint

255. Deny the allegations set forth in paragraph “255” of the complaint.

256. Deny the allegations set forth in paragraph “256” of the complaint.

257. Deny the allegations set forth in paragraph “257” of the complaint.

258. Deny the allegations set forth in paragraph “258” of the complaint.

259. Deny the allegations set forth in paragraph “259” of the complaint.

260. Deny the allegations set forth in paragraph “260” of the complaint.

261. Deny the allegations set forth in paragraph “261” of the complaint

262. Deny the allegations set forth in paragraph “262” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE FOURTEENTH CAUSE OF ACTION**

263. Repeat and reallege each and every response to paragraphs “1” through “259” of the complaint, as though fully set forth herein.

264. Deny the allegations set forth in paragraph “264” of the complaint.

265. Deny the allegations set forth in paragraph “265” of the complaint.

266. Deny the allegations set forth in paragraph “266” of the complaint.

267. Deny the allegations set forth in paragraph “267” of the complaint.

268. Deny the allegations set forth in paragraph “268” of the complaint.

269. Deny the allegations set forth in paragraph “269” of the complaint.

270. Deny the allegations set forth in paragraph “270” of the complaint.

271. Deny the allegations set forth in paragraph “271” of the complaint.

272. Deny the allegations set forth in paragraph “272” of the complaint, except

admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE FIFTEENTH CAUSE OF ACTION**

273. Repeat and reallege each and every response to paragraphs “1” through “269” of the complaint, as though fully set forth herein.

274. Deny the allegations set forth in paragraph “274” of the complaint.

275. Deny the allegations set forth in paragraph “275” of the complaint.

276. Deny the allegations set forth in paragraph “276” of the complaint.

277. Deny the allegations set forth in paragraph “277” of the complaint.

278. Deny the allegations set forth in paragraph “278” of the complaint.

279. Deny the allegations set forth in paragraph “279” of the complaint.

280. Deny the allegations set forth in paragraph “280” of the complaint.

281. Deny the allegations set forth in paragraph “281” of the complaint.

282. Deny the allegations set forth in paragraph “282” of the complaint.

283. Deny the allegations set forth in paragraph “283” of the complaint.

284. Deny the allegations set forth in paragraph “284” of the complaint.



285. Deny the allegations set forth in paragraph “285” of the complaint.

286. Deny the allegations set forth in paragraph “286” of the complaint.

287. Deny the allegations set forth in paragraph “287” of the complaint.

288. Deny the allegations set forth in paragraph “288” of the complaint.

289. Deny the allegations set forth in paragraph “289” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE SIXTEENTH CAUSE OF ACTION**

290. Repeat and reallege each and every response to paragraphs “1” through “286” of the complaint, as though fully set forth herein.

291. The allegations of paragraph “291” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

292. Deny the allegations set forth in paragraph “292” of the complaint.

293. Deny the allegations set forth in paragraph “293” of the complaint.

294. Deny the allegations set forth in paragraph “294” of the complaint.

295. Deny the allegations set forth in paragraph “295” of the complaint.

296. Deny the allegations set forth in paragraph “296” of the complaint.

297. Deny the allegations set forth in paragraph “297” of the complaint.

298. Deny the allegations set forth in paragraph “298” of the complaint.

299. Deny the allegations set forth in paragraph “299” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE SEVENTEENTH CAUSE OF ACTION**

300. Repeat and reallege each and every response to paragraphs “1” through “296” of the complaint, as though fully set forth herein.

301. Deny the allegations set forth in paragraph “301” of the complaint.

302. Deny the allegations set forth in paragraph “302” of the complaint.

303. Deny the allegations set forth in paragraph “303” of the complaint.

304. Deny the allegations set forth in paragraph “304” of the complaint.

305. Deny the allegations set forth in paragraph “305” of the complaint.

306. Deny the allegations set forth in paragraph “306” of the complaint.

307. Deny the allegations set forth in paragraph “307” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE EIGHTEENTH CAUSE OF ACTION**

308. Repeat and reallege each and every response to paragraphs “1” through “304” of the complaint, as though fully set forth herein.

309. The allegations of paragraph “309” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

310. The allegations of paragraph “310” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

311. Deny the allegations set forth in paragraph “311” of the complaint.

312. Deny the allegations set forth in paragraph “312” of the complaint.

313. Deny the allegations set forth in paragraph “313” of the complaint.

314. Deny the allegations set forth in paragraph “314” of the complaint.

315. Deny the allegations set forth in paragraph “315” of the complaint.

316. Deny the allegations set forth in paragraph “316” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE NINETEENTH CAUSE OF ACTION**

317. Repeat and reallege each and every response to paragraphs “1” through “313” of the complaint, as though fully set forth herein.

318. The allegations of paragraph “318” of the complaint set forth conclusions of law to which no response is required; to the extent a response is required, deny all such allegations.

319. Deny the allegations set forth in paragraph “319” of the complaint.

320. Deny the allegations set forth in paragraph “320” of the complaint.

321. Deny the allegations set forth in paragraph “321” of the complaint.

322. Deny the allegations set forth in paragraph “322” of the complaint.

323. Deny the allegations set forth in paragraph “323” of the complaint.

324. Deny the allegations set forth in paragraph “324” of the complaint.

325. Deny the allegations set forth in paragraph “325” of the complaint.

326. Deny the allegations set forth in paragraph “326” of the complaint.

327. Deny the allegations set forth in paragraph “327” of the complaint.

328. Deny the allegations set forth in paragraph “328” of the complaint.

329. Deny the allegations set forth in paragraph “329” of the complaint.

330. Deny the allegations set forth in paragraph “330” of the complaint.

331. Deny the allegations set forth in paragraph “331” of the complaint.

332. Deny the allegations set forth in paragraph “332” of the complaint.

333. Deny the allegations set forth in paragraph “333” of the complaint.

334. Deny the allegations set forth in paragraph “334” of the complaint.

335. Deny the allegations set forth in paragraph “335” of the complaint.

336. Deny the allegations set forth in paragraph “336” of the complaint.

337. Deny the allegations set forth in paragraph “337” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE TWENTIETH CAUSE OF ACTION**

338. Repeat and reallege each and every response to paragraphs “1” through “334” of the complaint, as though fully set forth herein.

339. Deny the allegations set forth in paragraph “339” of the complaint.

340. Deny the allegations set forth in paragraph “340” of the complaint.

341. Deny the allegations set forth in paragraph “341” of the complaint.

342. Deny the allegations set forth in paragraph “342” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

**ANSWERING THE TWENTY-FIRST CAUSE OF ACTION**

343. Repeat and reallege each and every response to paragraphs “1” through “339” of the complaint, as though fully set forth herein.

344. Deny the allegations set forth in paragraph “344” of the complaint.

345. Deny the allegations set forth in paragraph “345” of the complaint.

346. Deny the allegations set forth in paragraph “346” of the complaint.

347. Deny the allegations set forth in paragraph “347” of the complaint.

348. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “348” of the complaint.

349. Deny the allegations set forth in paragraph “349” of the complaint, except admit that plaintiff purports to demand judgment as stated therein.

350. Deny the allegations set forth in paragraph “350” of the complaint.

351. Deny the allegations set forth in paragraph “351” of the complaint.

352. Deny the allegations set forth in paragraph “352” of the complaint.

353. Deny the allegations set forth in paragraph “353” of the complaint.

354. Deny the allegations set forth in paragraph “354” of the complaint.

355. Deny the allegations set forth in paragraph “355” of the complaint, except admit that plaintiff purports to demand judgment as stated therein; and admit that plaintiff demands trial by jury.

#### **FIRST AFFIRMATIVE DEFENSE**

356. The complaint fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

357. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has defendant violated any act of Congress providing for the protection of civil rights.

#### **THIRD AFFIRMATIVE DEFENSE**

358. At all times relevant to the acts alleged in the complaint, the duties and functions of the municipal defendants’ officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York has governmental immunity from liability.

**FOURTH AFFIRMATIVE DEFENSE**

359. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct and was not the proximate result of any act of the defendant.

**FIFTH AFFIRMATIVE DEFENSE**

360. Defendants had probable cause and/or reasonable suspicion for the conduct in question.

**SIXTH AFFIRMATIVE DEFENSE**

361. None of the defendants violated any clearly established constitutional right of which a reasonable person would have known, and therefore, said defendants are protected from liability by qualified immunity.

**SEVENTH AFFIRMATIVE DEFENSE**

362. Punitive damages may not be recovered against the City of New York.

**EIGHTH AFFIRMATIVE DEFENSE**

363. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitation.

**NINTH AFFIRMATIVE DEFENSE**

364. Plaintiff has failed to comply with the conditions precedent to this lawsuit, including those mandated by Section 50-e of the General Municipal Law.

**WHEREFORE**, defendants request judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
September 28, 2007

**MICHAEL A. CARDOZO**  
Corporation Counsel of the  
City of New York  
Attorney for Defendant  
100 Church Street  
New York, New York 10007  
(212) 788-1599

By: /s/  
Arthur G. Larkin (AL 9059)  
Assistant Corporation Counsel

TO: THE LAW FIRM OF JOHN F. SCUTTY, P.C.  
*Attorneys for Plaintiff*  
445 Park Avenue, 9<sup>th</sup> Floor  
New York, New York 10022  
(212) 836-4796  
(By ECF)

07-CV-6211 (SAS) (HBP)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALAN NEWTON,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**ANSWER OF DEFENDANTS CITY OF NEW YORK,  
JOHNSON, FREUND, NEWBERT, RYAN, HARRIS,  
LEHO, O'TOOLE, SHEEHAN, MCGUIRE, KIELY AND  
TRABITZ**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York*

*Attorney for Defendants*

*100 Church Street, Room 3-193*

*New York, N.Y. 10007*

*Of Counsel: Arthur G. Larkin*

*NYCLIS No. 2007-021009*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200.....*

*..... Esq.*

*Attorney for.....*